

No. 16154

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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THE COLEMAN COMPANY, INC., a corporation,

*Defendant-Appellant,*

*vs.*

THE SIEGLER CORPORATION, a corporation,

*Plaintiff-Appellee.*

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## BRIEF OF PLAINTIFF-APPELLEE THE SIEGLER CORPORATION.

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## TOPICAL INDEX

	PAGE
Introduction .....	1
Coleman asserted infringement for nothing more than nuisance value .....	2
Statement of the case.....	6
The Giwosky patent is a mere immaterial variation from the prior art .....	7
By contrast the reference Hollingsworth represented a real contribution to the home-heating art.....	9
The Browell patent anticipates the claimed novelty in Giwosky .....	11
Argument .....	13

### I.

The trial court's findings of fact in the instant case are proper and serve the important function of advising this court of the basis of the trial court's judgment.....	13
---	----

### II.

Any issue in this case is purely an issue of law.....	21
---	----

### III.

No evidence is needed to clarify the meaning of the Giwosky patent .....	22
--	----

### IV.

Giwosky's immaterial variation over Hollingsworth is not patentable .....	26
---	----

### V.

Claim 2 of the Giwosky patent is invalid in the light of the prior patents to Hollingsworth and Browell.....	29
--	----

### VI.

The Giwosky device required no more than ordinary skill in the art.....	33
---	----

## VII.

The device of the Giwosky patent does not meet the test of the A & P case.....	35
--	----

## VIII.

The presumption of validity of Giwosky is destroyed.....	37
A. The Browell patent, not cited by the Patent Office during its consideration of the Giwosky application, is more pertinent than any of the references the Patent Office did cite, with the exception of Hollingsworth....	37
B. The presumption of validity of the Giwosky patent was not ignored. On the contrary, it was overcome by an abundance of evidence that was not before the Patent Office when the Giwosky patent was granted.....	41

## IX.

No further evidence is required to establish the invalidity of Claim 2 of the Giwosky patent.....	45
---	----

## X.

The Giwosky patent is but a "paper" patent, directed to something that Coleman promised to do and never did.....	50
Conclusion .....	54
Appendix A. Drawing of first wall heater.	

## TABLE OF AUTHORITIES CITED

CASES	PAGE
A & P case, 340 U. S. 147.....	35, 37
Alvarado Sales Co. v. Rubalof, 120 U. S. P. Q. 355.....	37
Armour and Company v. Wilson, 119 U. S. P. Q. 365.....	24
Bergman v. Aluminum Lock Shingle Corp., 251 F. 2d 801.....	21, 32, 37
Bobertz v. General Motors Corp., 228 F. 2d 94.....	44
Bridgeport Brass Co. v. Bostwick Laboratories, Inc., 181 F. 2d 315 .....	43
Cee-Bee v. Delco Products, 120 U. S. P. Q. 72.....	25
Coleman v. Holly, No. 14711.....	3, 30
Coleman v. Holly, No. 16141.....	3
Coleman v. Siegler, No. 16154.....	3
Coleman Co. v. Holly Mfg. Co., 233 F. 2d 71.....	1, 36
Dow Chemical Co. v. Halliburton Co., 324 U. S. 320.....	28
Ellis v. Cates, 178 F. 2d 791.....	43
Holly v. Coleman, 233 F. 2d 71.....	8, 9, 26
Jacuzzi Brothers v. Berkeley Pump Co., 191 F. 2d 632.....	44
Mast, Foos & Co. v. Stover Co., 117 U. S. 485.....	33
Park-In Theatres v. Perkins, 190 F. 2d 137.....	47, 48, 49, 55
Staude v. Bendix Products Corp., 110 F. 2d 484.....	50
Toledo Pressed Steel Co. v. Standard Parts, Inc., 307 U. S. 350 .....	35
Trowler v. Phillips 260 F. 2d 924.....	13, 14
Vermont Slate Co. v. Tatko Bros., 233 F. 2d 9.....	2, 32

### RULES

Federal Rules of Civil Procedure, Rule 56.....	32
--	----

### STATUTE

United States Code, Title 35, Sec. 103.....	33
---	----

### TEXTBOOK

Walker on Patents (Deller's Ed., 1937), p. 1242.....	23
--	----









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**BRIEF OF PLAINTIFF-APPELLEE THE  
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**Introduction.**

In view of the long history of litigation between the parties involving the subject matter of the patent in suit—wall heaters—a trial on the validity of Coleman's Giwosky patent would be useless. In the previous litigation between the parties, both this Court and the District Court thoroughly considered the subject matter of the case at bar.\* (*Coleman Co. v. Holly Mfg. Co.*, 233 F. 2d 71 (9th Cir., 1956).)

The District Court, on the basis of facts which are not disputed or which have been laid at rest in the previous case, granted a summary judgment declaring the one claim of the patent in suit allegedly infringed by the plaintiff to be invalid. On the question of validity of the

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\*In November, 1955, The Siegler Corporation, appellee, acquired the assets of Holly Manufacturing Company, and carried on the wall-heater business built up by Holly.

patent in suit, no genuine issue of material fact exists. As in the case of *Vermont Slate Co. v. Tatko Bros.*, 233 F. 2d 9, 10 (2nd Cir., 1956):

“The prior art and the patent claims are without expert aid, easily understandable . . . nor did it require expert testimony to make it plain that the differences between the prior art and the patent claims were obvious to persons having ordinary skill in the trade at the time the alleged invention was made . . .

“Summary judgment represents a most useful legal invention to save time and expense, by the avoidance of a trial, when there exists no material fact-issues. It may well be that, in a patent case, a Judge should exercise unusual caution in granting a summary judgment. But there are patent cases when it would be an absurd waste of time and effort to deny such a judgment. *This is such a case.*” (Italics added.)

#### **Coleman Asserted Infringement For Nothing More Than Nuisance Value.**

Appellant states that this action commenced when the plaintiff appellee filed its complaint for declaratory relief in the court below. (Op. Br. p. 1.) Only in a narrow technical sense is the statement correct. As must be obvious to all, Coleman's assertion of infringement is inextricably woven into its stubbornly litigious conduct which it undertook to cover its intentional and deliberate infringement of the Hollingsworth patent owned by Holly, previously considered by this Court, and now before this Court in Appeal No. 16141 concerning the accounting for Holly's damages.

As will be developed in more detail later in this brief, the Giwosky patent is directed to something that Coleman represented to Holly that Coleman was going to put on

the market in 1953, but never did. [R. 153-157, 164, 165.]\* Until 1957, after the injunction in the prior litigation had become final and Coleman was held in contempt, it continued to follow Holly. When at long last and as a result of the contempt proceeding Coleman quit copying Holly, it did not adopt the Giwosky design but instead began to manufacture wall heaters that had no economizer at all. [Acc. R. 1623.] This course of conduct establishes clearly that Giwosky's design was impractical and that his patent is no more than paper. Coleman's conduct also indicates that the Giwosky patent was only applied for to gain whatever nuisance value it might have in Coleman's stubborn, protracted and vexatious litigation against Holly. The following facts are significant:

1. The Giwosky patent was not applied for until long after the Hollingsworth patent issued and the Holly devices were on the market.

2. The Giwosky application was not filed until after Giwosky had seen the Holly devices which the Coleman company, Giwosky's assignee, "faithfully copied with immaterial variances." (233 F. 2d 71, 84.)

3. The Giwosky patent was applied for after the litigation with Holly had been started.

4. The single claim which Coleman alleged to be infringed by Siegler was added to the Giwosky application after the alleged infringing devices had been on the market for a substantial period of time. (File wrapper, Amendment dated July 11, 1956.)

5. The single claim which Coleman alleged to be infringed by Siegler was added to the application after this

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\*In this brief the record references are designated "R." to denote the record in *Coleman v. Siegler*, No. 16154; "Acc. R." to denote the accounting record in *Coleman v. Holly*, No. 16141; and "Orig. R." to denote the original record in *Coleman v. Holly*, No. 14711.

Court held Coleman to be a deliberate infringer of the Hollingsworth patent. (File wrapper, Amendment dated July 11, 1956.)

6. Coleman never put any patent marking on its wall heaters pertaining to the Giwosky patent or the application for Giwosky's patent. [R. 26.]

7. Coleman's counsel in the prior litigation, Mr. Lyon, intimated at the trial that the application for the Giwosky patent was made simply to keep someone else from filing on the same thing. The colloquy with reference to the Giwosky application is most revealing:

"The Court: Upon what basis does the defendant claim an invention was taking in of the air in the front?

Mr. Lyon (Speaking for Coleman): I do not know, your Honor. We haven't got a patent. *Many manufacturers, as your Honor knows, will file an application to protect himself from having somebody else file on the same thing.\** Now, I don't know what the principle was that they filed on this. We didn't say we had a patent. In fact, I can state to this Court that we don't.

The Court: I assume someone made an affidavit with respect to the patent.

Mr. Lyon: That he thought it was an invention at the time he drew it. But I can tell the court right here and now that the [Giwosky] application was rejected on the Browell patent, if you are interested in that. I don't think it is germane to this issue." [R. 160-161.]

Mr. Lyon was mistaken, at least, when he told the trial court that the Browell patent had been cited in the

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\*Emphasis ours.

Giwosky application. It never was, although Coleman had ample opportunity and more than a year to call the Browell patent to the attention of the Patent Office after Mr. Lyon made his remark. But Mr. Lyon was probably quite correct when he suggested that the only reason the Giwosky application was filed was to keep someone else from filing on the same thing. In short, there are strong indications that the Giwosky patent was obtained purely for its nuisance value.

8. That this is the case is further borne out by the fact that Coleman did not send Holly a notice of alleged infringement of the Giwosky patent until on or about December 31, 1956, three days after the final injunction prohibiting infringement of the Hollingsworth patent was served on Coleman. [R. 136; Acc. R. 39.] Coleman's notice of alleged infringement appears to be "Tit for tat. You sued us. Now we sue you!"

Despite the fact that the Holly heater does not infringe [Acc. R. 1205], despite the fact that the Giwosky patent is a mere paper patent that no one has used, not even Coleman, and despite the fact that the inventor Giwosky found that the device of Claim 2 would not work [R. 41, 43], Coleman asserted infringement for whatever nuisance value it could derive in the accounting. The two cases have thus been interwoven by Coleman. Both cases are now before this Court, and Coleman has indicated that it will seek "consolidation of the two appeals." (Acc. Op. Br. 23.)

Coleman's course of conduct with respect to the Giwosky patent smacks of blatant insincerity—one more link in its stubbornly litigious conduct for which it was rightly penalized by the District Court in the accounting in the prior case.

### Statement of the Case.

The patent in suit, No. 2,767,702 granted October 3, 1956, to Giwosky and assigned to Coleman, the defendant-appellant, contains only two claims. During discovery proceedings, Coleman admitted that Claim 1 is not infringed by any devices made by Siegler (plaintiff-appellee) or its predecessor Holly. [R. 29, 259.] Consequently, only Giwosky's Claim 2 is involved in this action.

On Siegler's motion for summary judgment, the District Court held that Claim 2 of the Giwosky patent is invalid "for want of invention over the prior art" as represented by Hollingsworth patent No. 2,602,441 granted July 8, 1952 and Browell patent No. 268,860 granted December 12, 1882. [R. 136.] In arriving at this decision the District Court had before it (in addition to the Giwosky patent, its file wrapper history, and the Hollingsworth and Browell patents) the entire record of the prior litigation between the parties, over which the Court had presided. This was stipulated by the parties at the Court's request. [R. 276-277, 312.] All three patents, Giwosky, Hollingsworth, and Browell, figured prominently in the prior litigation and at this late date there can be no real dispute about what these patents claim or disclose.

In the prior litigation, the Hollingsworth patent was in suit. The Browell patent was one of the principal references relied upon by Coleman in an effort to show that its heaters were built according to the teachings of the prior art. The Giwosky patent represents a heater design that Coleman falsely represented to Holly that it would make and sell in order to avoid the Hollingsworth patent. [R. 153, 164, 165.] The devices of all three patents were thoroughly explored in the prior litigation and



the record of the prior litigation contains abundant evidence about all three. The facts about all of them are indisputable. They are admitted by Coleman, judicially determined by the trial court and this Court of Appeals, or undisputed by the parties.

**The Giwosky Patent Is a Mere Immaterial Variation From the Prior Art.**

Claim 2 of the Giwosky patent, the only claim in issue in this litigation, reads as follows:

“In a wall heater and economizer structure, a vertically-extending lower heater casing for housing a combustion chamber, an economizer casing extending above said lower heating casing, a barrier plate extending across said lower heater casing beneath said economizer casing and near the top of said lower heater casing, a flue extending through said barrier plate from within said lower heater casing and through said economizer casing and in spaced relation to the side walls thereof, the upper portion of the front of said lower heater casing providing a heated air outlet adjacent the under side of said barrier plate, the front portion of said lower heater casing projecting outwardly further than the front portion of said economizer casing, said projecting portion including the forward portion of said barrier plate and providing a casing hood portion extending above and over said barrier plate forward portion, said casing hood portion being spaced from said barrier plate forward portion to provide a passage for the flow of air over the upper surface of said barrier plate forward portion, said economizer casing having an air inlet near the bottom of the front thereof and an air outlet above said inlet but adapted to be below the ceiling level of a room space, said economizer air inlet being positioned inwardly of said barrier plate

forward portion and adjacent the upper surface of said barrier plate, said casing hood portion providing a room air inlet means outwardly of said economizer casing air inlet opening, said room air inlet means adapted to communicate on one side with the room atmosphere and on the other with said air passage over the upper surface of the forward portion of said barrier plate, and said room air inlet means being constructed and arranged to cause room air to pass over the said upper surface of the said barrier plate forward portion in heat exchange relation therewith."

In the earlier case of *Holly v. Coleman*, the Giwosky patent had been applied for but had not been issued at the time this Court found Holly's patent valid and infringed. As originally applied for, the application related to a wall heater in which there were at least three distinct stages of heat exchange. The first stage was around the primary heater in the lower box, the second stage was around the lower portion of the flue in the so-called economizer, and the third stage was around the upper portion of the flue and exhausted warmed air into the attic of the house in which the heater was installed or into the atmosphere. [R. 69.] At the trial of the case of *Holly v. Coleman*, Coleman's expert, Mr. Kice, testified with respect to the Giwosky application and Exhibit Z which he had before him:

"The second stage is shown in green, the ventilation air passage is shown in green, and includes an independent air source built into the top of the cabinet shell.

"We believe it is basically different and have applied for patent on it." [Orig. R. 341.]



During the accounting, Mr. Dawson, Coleman's patent attorney who prosecuted the Giwosky application before the Patent Office, testified that in the Giwosky application, "the important feature was that instead of bringing air in from the bottom of the casing around the lower heater (as shown in Hollingsworth) that the air was admitted freely through a vent in the very front of the economizer, so that the room air could be utilized in cooling the top of your heater." [R. 163.]

Mr. Dawson further testified that an exhibit [shown in Orig. R. 516] which the trial court had before it in the case of *Holly v. Coleman* included a sketch of a wall heater which was identical with the drawing in the patent in suit. [R. 164-165.] Therefore, in the record in the prior case the trial court had before it the Giwosky disclosure and authoritative interpretations of what was covered by the Giwosky patent application. This Court found any differences between what was there presented and the Holly patent to be mere "immaterial variances" in construction claimed to affect the passage of air from the bottom of the competing devices. (233 F. 2d 71, 84.)

**By Contrast the Reference Hollingsworth Represented a Real Contribution to the Home-Heating Art.**

As this Court pointed out, Hollingsworth *et al.*, "parted company" with the prior art and created "something new in overall construction and functional operation—a compact unitary wall device which could easily be adapted to the modern pattern and mode of living under conditions of urban life." (233 F. 2d 71, 84.)

The Hollingsworth patent was the patent in suit in the prior litigation and is concerned with a gas-burning wall heater "of a size and shape and so designed as to be easily fitted into the wall of a room between two studs in

a standard wall partition.” (233 F. 2d 71, 73.) The Hollingsworth heater comprises in part a “main” gas-fired heater disposed in a lower box in the lower part of the wall and a secondary heat exchanger or “economizer” mounted in the wall immediately above the main heater. The flue from the main heater passes through the economizer and is cooled by air drawn into the economizer from the space in the wall around the back and sides of the lower box, this air being subsequently discharged into the room through a grille in the economizer near the ceiling.

Prior to the Hollingsworth invention, wall heaters were subject to a number of serious objections, as set out in detail by this Court in its decision in the prior case. (233 F. 2d 71, 81.) The Hollingsworth heater overcame these objections by integrating a primary heater with a secondary heat exchanger, the first to be employed in a wall heater. This Court held that

“From the entire record it appears that a ‘heat exchanger’ or ‘economizer’ of this peculiar construction or arrangement has never been embodied in any type of mechanical wall heater apparatus prior to its application and use in the Holly (Hollingsworth) device (233 F. 2d 71, 79), and Mr. Giwosky candidly admitted that the Holly or Hollingsworth wall heater was the first on the market with a secondary heat exchanger or economizer.” (233 F. 2d 71, 84.)

It was the Hollingsworth heater with its integrated economizer that solved the serious problems that confronted wall-heater manufacturers. The District Court found, and this Court of Appeals reiterated, that Hollingsworth’s invention permitted

“the thermal input of wall heaters to be increased without bringing about excessive wall temperatures at any point in the wall from floor to ceiling, and

without reducing thermal efficiency of the wall heaters; and that the invention of the patent in suit has simultaneously solved the hot wall problem from floor to ceiling, increased thermal efficiency while permitting increased heat input, improved air circulation within the room, minimized heat loss due to warm air being sucked out of the room through the draft hood, and has rendered this heat loss substantially independent of flue height." (233 F. 2d 71, 81.)

It is *res judicata* that the Hollingsworth patent represents a great step forward in the wall heater art and that Hollingsworth was the first to teach the use of integrated economizers in gas-burning wall heaters.

**The Browell Patent Anticipates the Claimed Novelty in  
Giwosky.**

In the prior litigation, Coleman "introduced in evidence fourteen prior patents to exemplify prior art in house-heating devices or appliances." However, on the appeal before this Court, it saw fit to discuss, compare and principally rely on only three prior patents in the household-heating field of art. One of these was the Browell patent granted in 1882. This patent does not relate to gas-fired wall heaters, and of itself does not solve the problems which plagued wall heaters prior to Hollingsworth. But, as Coleman admits (Op. Br. p. 9) it does disclose the use of an economizer with a fireplace.

At the trial of the original action, Coleman's expert Jack Kice went to great pains to show that Coleman's economizer was constructed exactly in accordance with the Browell patent. Mr. Kice testified that in the Browell device "air enters the economizer in openings directly above the lower box, absorbed heat from the flue within the economizer and was then discharged into the room

through an outlet at the top of the economizer.” [R. 144.] He went on to say that “the Coleman design . . . is quite similar to the old Browell patent of 1882 . . .” [R. 147.]

And at the trial, Coleman’s then counsel, Mr. Lyon, argued that the Coleman heater operated entirely in accordance with the Browell patent. Thus Mr. Lyon asserted: “It is entirely the principle of that 1882 patent and not the McLeod or the patent in suit (Hollingsworth). [R. 160.]

The extreme relevance of Browell to the Giwosky patent is thus admitted by Coleman. And even in the absence of these admissions the relevance would be plain from a comparison of the Giwosky patent drawings with those of Browell. In the Giwosky patent, all the air to cool the economizer enters the economizer from the room through grills 20 to 21 in the bottom of the economizer, passes upwardly in heat exchange relationship with the flue 17 inside the economizer and is discharged at the top of the economizer through the grille 24. [R. 314.] In the Browell heater all of the cooling air enters the economizer through the holes in the bottom of the economizer, passes upwardly in heat exchange relationship with the flue E inside the economizer and is discharged at the top of the economizer through the outlet I. [R. 323-324.]

There is no disagreement as to what Hollingsworth or Giwosky or Browell disclose and, as we show later, no disagreement as to what Giwosky claims in his Claim 2. The only question on this appeal is whether or not what Giwosky claims in his Claim 2 amounts to invention over what Hollingsworth and Browell disclose. On the undisputed facts the trial court could only conclude that it did not.

## ARGUMENT.

### I.

#### The Trial Court's Findings of Fact in the Instant Case Are Proper and Serve the Important Function of Advising This Court of the Basis of the Trial Court's Judgment.

This Court in its recent decision in *Trowler v. Phillips* observed that:

“It is interesting to note that findings of fact and conclusions of law were prepared and signed. The theory of a summary judgment is that there are no disputed facts. We have seen findings of fact accompanying summary judgments, Rule 52(a) of the Federal Rules of Civil Procedure, 28 U. S. C. A., which, while unnecessary, did provide a handy summary. But all too often a set of unnecessary findings of fact is the telltale flag that points the way to a discovery that summary judgment should not have been granted.” (260 F. 2d (Adv.) 924, 926.)

In the case at bar, it is stipulated that the entire record in the earlier litigation between the same parties is part of the record in the present case. The record for the prior litigation comprises eight printed volumes. The findings provide “a handy summary” of the facts which the court had before it. In the *Trowler* case the only things that were before the trial court were copyrighted maps, the alleged infringing maps, and an affidavit containing a partial description of how the copyrighted maps had been prepared from certain source material. This source material was not in evidence and accordingly the trial court had no way of determining just how much originality the plaintiff copyright owner had exercised in preparing his maps.



In the instant case there is no genuine issue as to “how much originality” was exercised by the patentee, Giwosky. The contents of the patent in suit, its file wrapper history and the two prior patents relied upon as anticipations are not in dispute. All such issues had long since been resolved by the decision of the District Court and this Court of Appeals in the prior litigation or by Coleman’s admissions in the prior litigation. No additional evidence is necessary to determine what Giwosky’s alleged improvement was or what the prior art patents to Hollingsworth and Browell disclosed. Indeed, any additional evidence would be barred as contradictory of Coleman’s admissions or as contradictory of facts that have already been judicially determined in the prior litigation.

True, findings of fact were made in the instant case. But, as this Court has observed in a footnote in *Trowler v. Phillips*, 260 F. 2d (Adv.) 924, 926, such findings are required on a motion for summary judgment by the Rules of the District Court for the Southern District of California, and a brief review of these findings shows that they are based upon uncontroverted facts as to the patent in suit, its file wrapper history, the prior art patents of Browell and Hollingsworth, the Court’s prior decisions, and Coleman’s admissions.

A brief discussion of the findings on invalidity is pertinent. They provide “a handy summary.”

“7. There is no genuine issue as to any material fact necessary to the consideration and determination of said motion for summary judgment.”

The seventh finding [R. 131] simply states that there is no genuine issue as to any material fact necessary to the consideration and determination of the motion for summary judgment. As we have shown, this finding

is clearly supported by Coleman's admissions and the Court's decisions in the prior litigation. Thus, during the prior litigation, Coleman's patent solicitor unequivocally defined the "important novel . . . feature" of the Giwosky patent. [R. 163.] During the prior litigation the District Court and this Court of Appeals defined with precision the prior teachings of Hollingsworth and Browell. (233 F. 2d 71, 73, 74, 77.) And during the prior litigation, Coleman's witness and counsel admitted that the "important novel . . . feature" of the Giwosky patent is precisely what Browell disclosed. [R. 144, 160.] There were no genuine issues as to the prior art or what Giwosky did to improve upon it. All that remained was a question of law—namely, whether or not what Giwosky did as compared with what the prior art taught amounts to invention. The seventh finding is clearly proper and necessary.

"10. Defendant has admitted that claim 1 of said Giwosky Patent No. 2,767,702 does not cover plaintiff's wall heater models 25NS, 25ND, 35NS, 35ND, 50ND, 57ND, 250S, 250D, 350S, 350D, 500D, 570D, 25S, 25D, 35S, 35D, 50D, and 55D, and the parties hereto have agreed that claim 1 of said Giwosky patent No. 2,767,702 is not in issue in this action."

Finding No. 10 merely sets out the material and undisputed fact that Coleman has admitted that Siegler does not infringe claim 1 of the patent in suit and is, of course, necessary and not a subject of dispute.

"11. It is admitted by the parties hereto that United States Letters Patent No. 268,860 issued to Browell in 1882 is pertinent prior art which concededly was not cited and presumably not considered by the Patent Office in passing on the application for the patent in

suit No. 2,767,702 issued to Giwosky, and further, the parties stipulated that the entire record of Holly Manufacturing Company v. The Coleman Company, Civil No. 15,886-WM in this Court, is now before this Court for consideration upon plaintiff's motion for summary judgment."

Finding No. 11 sets forth the fact that the Browell patent represents admittedly pertinent prior art that was not cited and presumably not considered by the Patent Office and that the parties stipulated that the entire record of the prior litigation was before the District Court. In the prior litigation, as we have shown, Coleman not only repeatedly admitted but stressed the pertinence of the Browell patent. [R. 145-147, 160.] The file wrapper history of the Giwosky patent shows without doubt that the Browell patent was not cited by the Patent Office. In view of its extreme pertinence, it is proper to presume that the Browell patent was not considered by the Patent Office. Lastly, the parties *did* stipulate that the entire record of the prior litigation was before the District Court. [R. 312.] The facts of Finding No. 11 involve no genuine issues and are necessary.

"12. The patent to Browell No. 268,860 discloses that it is old in the art to employ a metal flue construction on a primary heating appliance wherein air is taken into a casing about the flue at a location immediately above the primary heating appliance and discharge below a barrier in the casing at a location near the ceiling of the room in which the heating appliance is located. Claim 2 of the Giwosky patent No. 2,767,702 describes a metal flue construction 17 on a primary heating appliance 10 wherein air is taken into a casing 22 about the flue at a location 20 immediately above the primary heating appliance and discharge below a barrier 26 in the casing at a



location near the ceiling of the room in which the heating appliance is located, and hence claim 2 of said Giwosky patent No. 2,767,702 does not differ patentably from the device shown in the Browell patent No. 268,860.”

Finding No. 12 sets out what Browell discloses and compares this with the “important novel feature” of Giwosky’s claim 2. Coleman agrees (Op. Br. p. 24) that “the fact statements in the above finding are substantially correct”, but quarrels with the question of law that “Claim 2 of the Giwosky patent does not differ patentably from the device shown in the Browell patent No. 268,860”.

13. The patent to Hollingsworth, et al., No. 2,602,441, discloses that it is old in the art to employ in a wall heater having a primary heating element with a secondary heat exchanger to heat a stream of air in addition to that heated by the primary heating element, and the patent to Browell No. 268,860 discloses that it is old in the art to provide a secondary heat exchanger employing a metal flue construction on a primary heating appliance wherein air is taken into a casing about the flue at a location immediately above the primary heating appliance and discharged below a barrier in the casing at a location near the ceiling of the room in which the heating appliance is located. Claim 2 of the Giwosky patent No. 2,767,702 describes a wall heater employing a primary heating appliance and having a flue construction which serves as a secondary heat exchanger wherein air is taken into a casing about the flue at a location immediately above the primary heating appliance and discharged below a barrier in the casing at a location near the ceiling of the room in which the heating appliance is located, and hence claim 2 of said Giwosky patent No. 2,767,702 does not differ patentably from the

combination of the devices shown in Hollingsworth patent No. 2,602,441 and Browell patent No. 268,860.”

Finding 13 again sets forth the prior teachings of Browell, and the admitted “important feature” of Giwosky’s claim 2, and in addition sets forth prior art teachings of Hollingsworth, all of which are supported by the decision of the District Court and this Court of Appeals in the prior litigation.

“14. The device described in claim 2 of said Giwosky patent No. 2,767,702 is anticipated by United States Patent No. 268,860 issued to Browell in 1882 and it is also anticipated by the device disclosed in Hollingsworth patent No. 2,602,441 issued to Holly Manufacturing Company on July 8, 1952.

“15. The device described in claim 2 of said Giwosky patent No. 2,767,702 fails to meet the standard of invention required by the laws of the United States because the invention claimed therein lacks patentable novelty over the prior art patents.

“16. The device described in claim 2 of said Giwosky patent No. 2,767,702 fails to meet the standard of invention required by the laws of the United States because the subject matter of said claim 2 would have been obvious at the time the alleged invention was made to a person having ordinary skill in the art.”

Findings 14, 15 and 16 are based on the preceding findings of fact that claim 2 of the Giwosky patent is anticipated by the prior disclosures of Hollingsworth and Browell, and that the claim fails to meet the standard of invention required by law because “the invention claimed therein lacks patentable novelty over the prior

art patents” and “would have been obvious at the time the alleged invention was made to a person having ordinary skill in the art.”

“17. Extrinsic evidence is not needed to explain or evaluate the prior art, cited or uncited, and its applicability to the subject matter of claim 2 of the patent in suit.”

Finding 17 is to the effect that extrinsic evidence is not needed to explain or evaluate the prior art, cited or uncited, and its applicability to Giwosky’s claim 2. This is a proper finding, for, as we have shown, the art is not a complicated one requiring expert evidence to explain it, and even if it were, the facts judicially determined in the prior proceedings and Coleman’s admissions satisfy the requirement.

“18. In claim 2 of the Giwosky patent in suit, the various elements set forth as constituting the patented device do not produce any result not produced in the prior art, or any unexpected result, and do not produce in aggregation any result greater than the sum of their separate results, or any result different from the result which in aggregation is produced in the prior art.

“19. The elements of claim 2 of the Giwosky patent in suit, being an alleged combination invention composed of elements old in the art, do not perform any additional and different function in combination than they perform out of it and, as such, said claim 2 fails to meet the standard of invention required by the laws of the United States.”

Findings 18 and 19 are to the effect that the various elements set forth in Giwosky’s claim 2 do not produce any result not produced in the prior art, or any result

that is unexpected or any different from the result that in aggregation is produced in the prior art, and that the elements of Claim 2 do not perform any additional or different function in combination than they perform out of it. These conclusions, be they of fact or of law, are clearly supported by the record in the prior litigation. The device of Claim 2 was never made or sold by Coleman, as we have shown. It merely represents a design that Coleman falsely represented that it would change to in order to avoid the Hollingsworth patent. [R. 153-157, 164, 165.] This is *res judicata* in the other case. (233 F. 2d 71, 82.) It is at most merely an impractical design that Coleman promised to follow but never did. Thus, it may be said with complete veracity that the device of Coleman's Claim 2 never produced *any* results at all and that its combination of elements never performed *any* function.

In summary, all of the foregoing findings find support in the uncontroverted contents of the patent in suit, its file wrapper, in the prior art patents, in the decisions in the prior litigation, and in Coleman's admissions. They explain the Court's conclusion, and in any event are unsailable.

It should be emphasized that any one of the Findings 12, 13, 14, 15, 16, 18 or 19, taken alone, will support the judgment of invalidity of the patent in suit. Coleman therefore has the burden of *showing* that an issue of material fact exists as to each such finding in order to warrant reversal. It cannot do so.

II.

**Any Issue in This Case Is Purely an Issue of Law.**

This Court has recently discussed at length the question of whether the validity of a patent claim is an issue of fact or of law. (*Bergman v. Aluminum Lock Shingle Corp.*, 251 F. 2d 801, 803 (9th Cir., 1957).) In that case Judge Lemmon wrote:

“In *Atlantic and Pacific*, . . . 340 U. S. at page 155, . . . in the concurring opinion of Mr. Justice Douglas, we find the following correct statement of the law:

“‘The standard of patentability is a constitutional standard; and the question of validity of a patent is a question of law’ . . . .”

Judge Pope, in a concurring opinion, went into the matter in somewhat greater detail and wrote:

“ . . . but cases decided since *A & P Tea Co.* are not inconsistent with what I think is well stated in *Daller’s Walker on Patents*, 1957 Supp. at p. 115 of the original text as follows:

“‘The conflict between the statement that the question of invention is one of fact and the almost innumerable instances in which the courts have dealt with it as though it were one of law, can only be explained by breaking down the question of invention into its component parts: what the prior art was and what the patentee did to improve upon it, and then, whether what the patentee did is properly to be classified as an invention. The nature of the prior art and the nature of what the patentee did to improve upon it must always be questions of fact. The question of the name to be given to what was done by the patentee, whether it is to be called an invention over



the prior art or whether it is not, is a question fundamentally of the meaning of the words used in the statute [35 U. S. C. Sec. 31], and as such would seem to be a question of law.’ ”

In this case the nature of the prior art and what the patentee did to improve upon it, which are questions of fact, are not genuine issues for dispute. The art of wall heaters is not a highly technical one, like chemistry or electronics, and the two prior art patents, Hollingsworth and Browell, would, if necessary, speak for themselves. But they need not do so, because the District Court and this Court of Appeals have already considered both patents at length in the prior litigation and have already decided what they disclose. The Giwosky patent in suit and its Claim 2 also speak for themselves, and if this is not enough, Coleman’s counsel Mr. Dawson, has explained them in his testimony in the accounting proceedings. [R. 163-165.] No issue of material fact exists.

### III.

#### **No Evidence Is Needed to Clarify the Meaning of the Giwosky Patent.**

Claim 2 the only claim of Giwosky involved in the case at bar, has heretofore been quoted in full. The claim is admittedly verbose, but the subject matter is not complex, particularly to a trial judge who has acquired wide knowledge in the wall heater art in the prior litigation between the parties.

In its main brief (pp. 10, 26-28) Coleman protests that there is a conflict as to the meaning of Claim 2 and that the District Court erred in considering the validity of this claim before it had resolved the conflict. In support of this contention, Coleman refers to the two Giwosky affi-

davits and to another affidavit executed by Coleman's vice-president Newton. Actually, however, there is no conflict. Mr. Giwosky's affidavits are not concerned with the meaning of Claim 2, which is abundantly clear, especially when it is considered in the light of the Giwosky specification, as it must be. (*Walker on Patents* Dellers' Ed. 1937, p. 1242.) On the contrary, Mr. Giwosky's affidavits are related to other matters that are not in issue on this appeal. In its complaint for declaratory relief, Siegler alleged that Mr. Giwosky is not the inventor of the subject matter claimed in his patent [R. 4] and that Claim 2 of his patent is invalid because this claim was broadened during prosecution in the Patent Office to embrace something not described in the original application for the patent and not set out in the statement of invention or the claims as originally filed. [R. 5.] Mr. Giwosky executed a first affidavit in which he admits that one feature of Claim 2 is of no consequence and not part of his invention. Thus Mr. Giwosky swore that:

“Both Claims 1 and 2 of United States Patent No. 2,767,702 require that room air introduced into the second stage of heat exchange be brought into heat exchange relationship with the barrier plate at the bottom of the economizer. As I have already stated, this heat exchange relationship is of no consequence. I never considered that the bringing about of such relationship was a part of my invention to which my application was directed and never intended to claim it as a part of my invention.” [R. 43-44.]

Coleman's Newton agreed that bringing room air into heat exchange relationship with the barrier plate at the bottom of the Giwosky economizer, as required by Claim 2, is of no consequence. In his affidavit [R. 83] Newton swore that “There was no need, as indicated by Mr. Giwosky, to cool the closure plate, as such.”

Siegler, in its motion for summary judgment, also asserted that Mr. Giwosky did not invent the subject matter of Claim 2 of the patent and argued Coleman had misled the patent office by stressing the importance of cooling the lower box top to obtain a patent over the reference Hollingsworth. [R. 46, 65.]

The record shows that Coleman, without consulting Mr. Giwosky, amended his application by adding Claim 2 directed to a device Mr. Giwosky did not think would work. [R. 43.] In obtaining allowance of the claim, Coleman laid emphasis on the use of room air to cool the top of the lower box or barrier plate, and pointed up the possible dangerous overheating in Hollingsworth, which showed only a "dead air space" in the area (file wrapper, amendments dated May 29 and July 11, 1956). Both assertions were false.

Giwosky regarded cooling the barrier plate to be of no consequence, and, as Coleman's Kice had testified, Hollingsworth did not have a "dead air space" in the area above the lower box. [Orig. R. 359.]

On the basis of the foregoing facts, Siegler included misleading the Patent Office in its argument for summary judgment [R. 65], relying in part upon the rule reiterated in *Armour and Company v. Wilson*,\* 119 U. S. P. Q. 365, 370 (N. D. Ill., 1958) (Federal Reporter citation not yet available):

"The . . . patent was secured after furnishing the Patent Office with false and misleading evidence and statements, and this invalidates the . . . patent."

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\*By mere coincidence, the owner of the patent stricken down in the *Armour* case was represented by Coleman's patent counsel who are of record in the case at bar and who handled the Giwosky patent application in the Patent Office.



However, in the instant case, the Court did not base its decision upon the foregoing grounds. The purported fact issue raised by the Giwosky and Newton affidavits thus had nothing to do with the meaning of Claim 2 and was not involved in the Court's decision.

As to the meaning of Claim 2, Mr. Dawson, the attorney for Coleman who prosecuted the Giwosky patent application in the Patent Office, testified in the accounting proceedings in the prior litigation and stripped the claim of all the useless verbiage that it contains. In testifying about the Giwosky patent, he admitted that:

“And there the important feature was that instead of bringing the air in (to the economizer) from the bottom of the casing around the lower heater (as in Hollingsworth and Coleman's production heaters) that the air was admitted freely through a vent in the very front of the economizer, so that the room air could be utilized in cooling the top of your heater” [R. 163].

Mr. Dawson's admission disposes of any argument as to what Mr. Giwosky allegedly invented. In view of Hollingsworth, Mr. Giwosky's alleged invention is simply the bringing of room air directly into the base of the economizer through vents or grills located at that point *instead* of bringing it in upwardly through the space in the wall around the lower box of the heater.

The case is therefore not comparable to *Cee-Bee v. Delco Products*, 120 U. S. P. Q. 72 (9th Cir., 1958) (Federal Reporter citation not yet available), in which the meaning of the claim and the prior art could not be resolved without resolving an issue of fact.

As the Court in that case stated, however:

“What the prior art was and what the patentee did to improve upon it are questions of fact. Whether what the patentee did is properly to be classified as invention is a question of law . . . If there were here no genuine issues as to the material fact concerning prior art and the teaching of the . . . patent [in suit], the trial court’s conclusion that . . . [the patent] lacked invention would involve only a question of law which could be decided by summary judgment.”

In the instant case there is no issue as to what either the prior art or Giwosky taught. That the patent in suit lacked invention was therefore properly decided on a motion for summary judgment.

#### IV.

#### **Giwosky’s Immaterial Variation Over Hollingsworth Is Not Patentable.**

Both this Court and the District Court have considered the inconsequential differences between the Coleman design and the wall heaters described and claimed in the Holly patent, to Hollingsworth, No. 2,602,441, previously before this Court in the case of *Holly v. Coleman*, 233 F. 2d 71. In this connection it should be added that this Court found that Coleman’s production model wall heaters designed by Giwosky copied the Hollingsworth, *et al.* design with “immaterial variances.” (233 F. 2d 71, 84.)

The design covered by Giwosky’s patent differs from Coleman’s production model wall heaters designed by Mr. Giwosky since the economizers in the production models utilize air from around the lower box as well as air entering directly from the room, while the design in the patent provides a structure in which air entering the

bottom of the economizer “is entirely separate from the air heated by the wall heater”. [R. 315.]

Mr. Horace Dawson, who prosecuted the Giwosky application in the patent office, stated that Giwosky’s “important novel . . . feature was that instead of bringing the air in from the bottom of the casing around the lower heater that the air was admitted freely through a vent in the very front of the economizer” [R. 163] and that “It seemed to me that the structure shown in the Giwosky patent in effect closed off all the air” from around the lower box. [R. 164.]

The file wrapper of the Giwosky patent, particularly the amendment dated July 11, 1956, also provides Coleman’s reasons for its assertion that the Giwosky device is novel over Hollingsworth, *et al.*, No. 2,602,441. There, the suggested difference between Hollingsworth and Claim 2 of Giwosky is the use of room air flowing over the lower box top into the second stage of heating in Giwosky—the air that is warmed by circulation through the second box or economizer. Giwosky merely substituted an air source for the economizer through inlet grilles at the top of the lower-box panel.

In an earlier attempt to distinguish the Giwosky device over the Hollingsworth *et al.* patent, and in an endeavor to overcome the Final Rejection by the Patent Office dated December 21, 1955, counsel for Coleman also relied upon this feature as constituting the distinction of the Giwosky device over the Hollingsworth *et al.* patent. In Coleman’s amendment dated May 29, 1956, Coleman states with reference to the area just above the top of the lower box that Hollingsworth *et al.* “shows only dead air space in this area,” and in its amendment dated July 11, 1956, that “heating above the code limitation would be quite likely

to occur with the Hollingsworth construction, while the problem is overcome with applicant's [Giwosky's] construction."

However, the area in question in the Hollingsworth *et al.* device is in direct communication with and forms a part of the air passageway [designated No. 41 in the Hollingsworth *et al.* patent—R. 317] around the secondary heat exchanger which, in turn, receives air from the space [designated No. 24 in Figs. 3 and 4 of the Hollingsworth *et al.* patent—R. 317] about the sides and the back of the lower box or primary heater. Hence the Hollingsworth *et al.* patent does not show only dead air space in this area as represented by Coleman in its endeavor to find a patentable distinction between the Giwosky design and the Hollingsworth *et al.* design.

Coleman's expert, Mr. Kice, testified that the Hollingsworth *et al.* heater took room air "up through the columns of the trim \* \* \* into the space above the lower box \* \* \* into the secondary heat exchanger". [R. 152.]

As a matter of uncontroverted fact, therefore, Hollingsworth, *et al.* employs an arrangement which is the equivalent of the element Coleman urged to obtain a patent over Hollingsworth *et al.*

"It is elemental that the mere substitution of equivalents which do substantially the same thing in the same way, . . . is not such an invention as will sustain a patent." (*Dow Chemical Co. v. Halliburton Co.*, 324 U. S. 320, 330 (1945).)

V.

**Claim 2 of the Giwosky Patent Is Invalid in the Light of the Prior Patents to Hollingsworth and Browell.**

According to Coleman, the “important novel . . . feature” of the Giwosky patent is the bringing of room air into an economizer of a gas-burning wall heater through a vent or grille located at the base of the economizer *instead* of including a conduit for air through the space in the wall around the lower box of the heater, as taught by Hollingsworth and followed by Coleman in its production model heaters. The District Court, with the teachings of Hollingsworth and Browell thoroughly interpreted for it in the prior litigation and by this Court of Appeals’ prior decision, held that this did not amount to invention. The District Court was correct.

As this Court of Appeals has pointed out in its decision in the prior case (233 F. 2d 84), Mr. Giwosky himself admitted that the Holly gas-burning wall heater, built in accordance with the Hollingsworth patent, was the first on the market to employ an economizer or secondary heat exchanger, and that he had one of the Holly heaters before him when he began the design work on Coleman’s heaters. There can be no question that the successful Hollingsworth invention is much earlier in time than the purported invention of Mr. Giwosky.

The Giwosky patent is, in any view of the facts, a Johnny-come-lately in the art of gas-burning wall heaters. The application for it was not filed until October 1, 1953, more than a year after the Hollingsworth patent had



been issued, and long after Mr. Giwosky had had an opportunity not only to familiarize himself with the patent but with the Holly heater built in accordance therewith, and even after Holly had brought suit for infringement. Claim 2 of the Giwosky patent was not introduced into the application until July, 1956, several months after this Court had rendered its decision in the case of *Coleman v. Holly Mfg. Co.*, No. 14,711, affirming the trial court's ruling that Coleman had deliberately infringed the Holly patent. So Giwosky was far from being a pioneer in the wall-heater art. His superiors at Coleman told him to design a heater like the Holly, and following instructions, he was forced to be little more than a mere copyist. [R. 171-174.]

This Court, in referring to the Coleman heaters involved in the prior litigation, held "that all of the essential parts and elements of appellee's device have been, with immaterial variances, faithfully copied by appellant in constructing its various models . . ." (233 F. 2d 71, 84). A similar statement can readily be applied to Giwosky's alleged invention. This "invention" as defined in Claim 2 is a faithful copy of the Hollingsworth device with a single immaterial variation. This single immaterial variation is the bringing of room air into the economizer directly through vents in its base *instead* of upward through the space in the wall around the lower box. This variation is disclosed by Browell. As we pointed out repeatedly in our briefs in the prior litigation, the Browell patent, relating as it does to the much earlier fireplace art, did not in and of itself, solve the problems that confronted Hollingsworth in wall heaters. But the Browell patent does disclose the use of an economizer (as Coleman has admitted in its Op. Br. p. 9), and after Hollingsworth has showed how to use economizers in gas-burning wall

heaters, the Browell patent took on a relevance that it had not had before.

In Coleman's opening brief before this Court filed July 30, 1955 in the prior litigation, No. 14711, concerning infringement of the Hollingsworth patent, pages 40-41, *Coleman submitted that its device was "constructed directly in accordance with this Browell patent,"* and pointed out the similarities between the Browell economizer and that of Coleman. This argument did not relieve Coleman of the charge of infringement because, as this Court determined, the Coleman economizers drew air from *two* sources—directly from the room through grilles in the base of the economizer and *also* through the space in the wall around the lower box, as required by the Hollingsworth patent. But the argument is relevant in this later action because the device of the Giwosky patent, unlike the infringing heaters that Coleman made and sold, has an economizer that draws air from only *one* source—namely, through grilles or vents in the base of the economizer. This is *exactly* what Browell taught.

Coleman's Mr. Kice made this very plain at the trial in the earlier action between the parties. Mr. Kice interpreted the Browell disclosure by means of a drawing that he had made. This drawing was an overlay to Defendant's Exhibit AA in the prior litigation. Exhibit AA with the overlay is attached to this brief as Appendix A. Mr. Kice testified that this exhibit represented "the practical application of the Browell patent" and showed that in the Browell structure "air enters the economizers at Points A, in openings directly above the lower box, and would absorb heat from the flue and would exhaust back into the room through an outlet, which I will mark B" [R. 144]. A comparison of Exhibit AA and its overlay with Fig. 2 of the Giwosky patent [R. 314] shows that

the economizer of the two drawings are substantially identical. In both, the economizers receive all their air from vents at their bases and discharge this air through grilles at their tops just below the ceiling. As Mr. Kice intimated [R. 147], the "Coleman design [as represented by the Giwosky patent] . . . is quite similar to the old Browell patent of 1882." And Mr. Lyon, Coleman's then counsel, emphasized this fact when he asserted that the Coleman heater ". . . is entirely the principle of that 1882 patent. . . ." [R. 160.]

In summary, the record and decisions in the prior litigation establish beyond any possibility or argument that the device of Giwosky Claim 2 is identical with the prior device of the Hollingsworth patent save for an immaterial variation. This immaterial variation is disclosed by Browell. The District Court did not have to resolve any issues as to what Hollingsworth and Browell disclosed or what Giwosky did to "improve" upon these disclosures. The sole question before the District Court was whether or not Giwosky's "improvement" amounted to invention. This was purely a question of law which it correctly resolved. (*Bergman v. Aluminum Lock Shingle Corp.*, 251 F. 2d 801 (9th Cir., 1957).) *The District Court correctly found that Giwosky's contribution to the art was infinitesimal at best and does not amount to invention.*

The District Court based its decision upon readily understandable prior art, judicially determined facts, and Coleman's admissions. Summary judgment declaring the patent in suit invalid is therefore proper. (F. R. C. P., Rule 56; *Vermont Slate Co. v. Tatko Bros.*, 233 F. 2d 9 (2nd Cir., 1956).)



VI.

The Giwosky Device Required No More Than  
Ordinary Skill in the Art.

Admittedly, Hollingsworth *et al.* were the first to invent an integrated wall heater with a secondary heat exchanger. No inventive genius was necessary to adapt Browell's flue construction to the economizer or secondary heat exchanger once Hollingsworth had shown how to employ an economizer or secondary heat exchanger in a wall heater. The reference Browell shows a metal flue construction in which air is taken into a casing about the flue at points p directly above the primary heating appliance and discharged at an intermediate point I below a barrier. [R. 144.] The secondary heat exchanger of the Giwosky patent is the same thing. Air is taken into the casing about the flue at a point 20 directly above the primary heating appliance and discharged at an intermediate point 24 below a barrier. [R. 164, 165, 314.]

Section 103 of Title 35, United States Code provides:

"A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains."

In the ordinary case, Giwosky would be *presumed* to have knowledge of the references Hollingsworth and Browell. As the Supreme Court has made plain:

". . . whatever the facts may have been, he is chargeable with a knowledge of all pre-existing devices." (*Mast, Foos & Co. v. Stover Co.*, 117 U. S. 485, 493 (1900).)

Resort to presumptions of knowledge need not be made in the case at bar. Giwosky admitted having the Holly heater before him when he designed his device. He further admitted that the Holly heater was the only one on the market having a secondary heat exchanger or economizer when he designed Coleman's infringing heaters. (233 F. 2d 71, 84.) His instructions were to design a heater like the Holly. [R. 171-174.]

This Court and the trial court therefore held that Coleman copied Holly with "immaterial variations." As has been pointed out, the Giwosky patented heater differs from Coleman's production heaters since in the patent, *all* air entering the economizer enters from the room at a level above the top of the lower box. [R. 315.] Such a variation is shown by Browell. Adapting Browell to Hollingsworth requires no more than ordinary skill. Here again the reference Browell was known at Coleman during the prosecution of Giwosky's application for a patent.

Coleman's Kice in 1955 testified with respect to the Browell construction:

"Air enters the economizer at points A, in openings directly above the lower box, and would absorb heat from the flue and would exhaust back into the room through an outlet which I will mark B." [R. 144; Appendix A to this brief.]

Mr. Kice found in Browell the principle of introducing *all* air into the economizer from a level just above the lower box—the same principle which Mr. Dawson stated was the "important novel feature" of Giwosky. [R. 163.]

Certainly after Hollingsworth had shown *inter alia* how to prevent excessive wall temperatures, increase circulation and efficiency, and hold efficiency constant regardless of flue height by constructing a wall heater with an inte-

grated economizer, it required no more than ordinary skill by one who knew about Browell to adapt Browell to the Hollingsworth construction.

In prosecuting the Giwosky application, Coleman's patent attorney, Mr. Dawson, after final rejection of the application stressed that Giwosky brought air over the top of the lower box in "heat exchange relationship" as heretofore pointed out. Kice's description of Browell, that is, bringing air into the economizer "directly above the lower box" would accomplish the same thing, since Coleman's vice president Mr. Newton has stated:

"Whenever a stream of cool air contacts a hot metal plate it is necessarily and inevitably in 'heat exchange' relation with the plate." [R. 83.]

As the Supreme Court put it:

"The patented device results from mere aggregation of two old devices, and not from invention or discovery. . . . On the record before us, it is impossible to hold that production of the patented device required more than mechanical skill and originality attributable to those familiar with the art. . . ." (*Toledo Pressed Steel Co. v. Standard Parts, Inc.*, 307 U. S. 350, 356 (1939).)

## VII.

### The Device of the Giwosky Patent Does Not Meet the Test of the A & P Case.

In the landmark *A & P* case, 340 U. S. 147 (1950), the Supreme Court held with respect to mechanical devices such as in the patent at bar:

"The conjunction or concert of known elements must contribute something; only when the whole in some way exceeds the sum of its parts is the accumulation of old devices patentable."

In the instant case, the trial court found that the Giwosky device was a mere aggregation which produced no new and unusual results. [R. 135.]

The District Court thus found that the device of Giwosky's Claim 2 involves no new cooperative relationship and was productive of no new or surprising results, but it did not do so "by merely looking at a drawing of [Giwosky's] patented combination," as Coleman has argued in its opening brief, page 11. On the contrary, the District Court had before it the knowledge that Coleman had never made and sold any heaters containing the alleged "important novel feature" of the Giwosky patent (*i.e.*, the use of room air introduced directly into the base of the economizer instead of bringing this air up from the space inside the lower box), but on the contrary, had "faithfully copied" the Hollingsworth device with "immaterial variances," as judicially determined by this Court. (*Coleman v. Holly*, 233 F. 2d 71, 84.) The District Court also had before it Coleman's assertions in the prior trial that the Giwosky economizer operates "entirely on the principle" of the Browell patent, and this Court's careful description of what the Hollingsworth and Browell patents disclose.

The District Court further had observed tests of Coleman's and Holly's heaters. The District Court also had before it the testimony of Coleman's expert Berry who testified that a Coleman heater he had modified in accordance with Giwosky would not pass A.G.A. (American Gas Association) requirements because of excessive wall temperatures. [R. 230, 235.] The District Court also had before it the indisputable commercial success of the Hollingsworth heater and the fact that the Hollingsworth heater has had A.G.A. approval from the beginning. [233 F. 2d 71, 80; R. 159.] The District Court also had before it the

statement of the inventor Giwosky that he did not consider the two-stage wall heater of Claim 2 to be operative. [R. 41.] The District Court could therefore rightly have concluded that the device of Claim 2 represented a step backward in the art. Certainly its findings that the device of Claim 2 does not meet the test of the *A & P* case is well-founded in judicially determined facts and the statements of Coleman's representatives.

In doing so, the trial court was merely following the mandate "against dignifying combined 'segments of prior art' with the title of 'invention'." (340 U. S. 147, 153.) This mandate of "canon" has been expressly recognized by this Court of Appeals in *Bergman v. Aluminum Lock Shingle Corp.*, 251 F. 2d 801 (9th Cir., 1957), and has been more recently reenforced in *Alvarado Sales Co. v. Rubalof*, 120 U. S. P. Q. 355 (9th Cir., 1959) (Federal Reporter citation not yet available).

The District Court did not err.

## VIII.

### The Presumption of Validity of Giwosky Is Destroyed.

A. The Browell Patent, Not Cited by the Patent Office During Its Consideration of the Giwosky Application, Is More Pertinent Than Any of the References the Patent Office Did Cite, With the Exception of Hollingsworth.

In its opening brief (p. 7), Coleman argues that "the prior art evidence before the trial court was the same in all material respects as that which had been considered by the Patent Office prior to the granting of the [Giwosky] patent. This constitutes a clear disregard of the presumption of validity." Later on in its opening brief (pp. 18-19), Coleman argues that "the Browell



patent is less pertinent than the Hollingsworth patent, which was cited by the Patent Office, and is at most merely cumulative of other patents cited by the Patent Office.”

Admittedly, the Browell patent is less pertinent than the Hollingsworth patent, which (as we have demonstrated) relates to gas-fired wall heaters and represents the first successful use of economizers in such devices. As this Court remarked in its prior decision:

“The three fireplace patents above discussed [including the Browell patent] and heavily relied upon by appellant represent earlier concepts of heat conveyance through the use of such fireplaces, but in devising their apparatus the Holly patentees [Hollingsworth et al.] clearly appear to have parted company with the basic design portrayed by these concepts to create something new in overall construction and functional operation—a compact unitary wall device which could easily be adapted to the modern pattern and mode of living under conditions of urban life (or when gas would be available) and where an effective and reliable single room gas-burning heater device would be highly desirable and certainly very useful.” (233 F. 2d 71, 84.)

But, as we have already shown, the only substantial difference between the Hollingsworth device and that of Giwosky resides in the fact that Giwosky draws the air for his economizer directly from the room through openings at the base of his economizer, instead of drawing this air upward through the space inside the wall around the lower box. The testimony of Mr. Dawson, who

solicited the Giwosky patent, is unequivocal on this point. Speaking of the Giwosky patent, Mr. Dawson said:

“ . . . And there the important feature was that *instead\** of bringing the air in from the bottom of the casing around the lower box that the air was admitted freely through a vent in the very front of the economizer, so that the room air could be utilized in cooling the top of your heater.” [R. 163.]

This “important feature,” as we have already demonstrated, is clearly disclosed by Browell. It is *not* disclosed in the references cited by the Patent Office. These are the patents of Cayot, Snyder, Derrough, and Bacon, *et al.*

The Cayot Patent [R. 327] discloses a single stage wall heater *without any economizer at all*. Clearly it cannot teach what Browell taught.

The Snyder Patent [R. 336] discloses a fireplace provided with a secondary heat exchanger or economizer, but the economizer receives its air *from outside the house* through a port 15 and an upwardly rising duct 17 behind the fireplace itself. Snyder’s economizer receives no room air at all and certainly not any room air from a vent in the base of the economizer, as disclosed by Browell and claimed by Giwosky.

The Derrough Patent [R. 341] relates to brick chimney construction in a multi-storied building. In the chimney 1 there is a smoke flue 2 with a space around it. On each story there is an opening 4 *adjacent the floor* through which room air is admitted and a second opening 5 adjacent the ceiling through which the air is discharged.

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\*Emphasis ours.



The primary source of heat is not shown, but is apparently in the basement of the building. Derrough's disclosure is a far cry from that of Browell in which the primary source of heat (a fireplace) is disposed in the room with an economizer overlying it, this economizer, like that of Giwosky, receiving its air through vents in its base immediately above the primary source of heat.

The Bacon, *et al.*, patent [R. 343] is a fireplace with a hollow back. Air enters this hollow back from outside the house through a pipe 10, rises upwardly and is discharged through a grille 17 just above the fireplace. The device of Bacon *et al.* is the complete antithesis of Browell's structure. It *discharges* air into the room at the place where Browell *sucks the air* into his economizer, and *sucks air out of the room* near the ceiling through a grill 18 at the point where Browell *discharges* air from his economizer.

The devices disclosed by Cayot, Snyder, Derrough and Bacon *et al.*, like that of Browell, are all simple structures. No testimony is needed to explain them or to show that all are less pertinent to the Giwosky wall heater than is the device of Browell. None of them disclose an economizer in the wall immediately above the primary heater and with the air for the economizer admitted from the room directly into the base of the economizer and discharged adjacent the ceiling. Browell discloses just such a device—an economizer that is the same in all essentials as the economizer of Giwosky.

The irrelevance of the Cayot, Snyder, Derrough and Bacon *et al.*, patents is shown by Coleman's conduct in the prior litigation. In that litigation, Coleman doubtless made numerous searches in an effort to discover prior patents that disclosed structures as close as possible to its

infringing heaters. In its defense Coleman cited 14 prior patents, including that of Browell. But these prior patents did not include those of Cayot, Derrough or Bacon *et al.* They did include the Snyder patent [Orig. R. 897], but Coleman did not urge the relevance of this patent before the District Court and did not even mention it in its briefs or argument before this Court of Appeals. Instead, it relied heavily on the prior patent of Browell and undertook to show that the infringing heaters were direct descendants of Browell's device. This was not true, as this Court found. But as we have already shown, Giwosky is nothing more than the Hollingsworth heater modified in accordance with the teachings of Browell and, as such, is not an invention.

**B. The Presumption of Validity of the Giwosky Patent Was Not Ignored. On the Contrary, It Was Overcome by an Abundance of Evidence That Was Not Before the Patent Office When the Giwosky Patent Was Granted.**

In its opening brief (p. 7), Coleman asserts that:

“This appeal presents the unusual situation of a patent being held invalid on a motion for summary judgment where *the prior art evidence before the trial court was the same in all material respects as that which had been considered by the Patent Office prior to the granting of the patent.\** This constitutes a clear disregard of the presumption of validity.”

A large portion of Coleman's opening brief, beginning at page 13, is composed of an elaboration of this false assertion.

The facts are otherwise. The Patent Office did not have before it Mr. Dawson's interpretation of the Giwosky

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\*Emphasis ours.

patent. The Patent Office did not have before it Mr. Giwosky's affidavit in which he swore that some of the subject matter of claim 2 of the patent had been introduced without his knowledge and that he had never considered the two stage wall heater of this claim to be a part of his invention. [R. 43.] The Patent Office did not have before it the Browell patent which, as we have just established, is more pertinent than any of the references, except Hollingsworth, that the Patent Office relied upon. The Patent Office, so far as the record shows, did not have before it the findings of the District Court in the prior litigation about the relationship of the Giwosky "improvement" to the prior art as represented by the Hollingsworth and Browell patents. The Patent Office, due to the dates involved, could not have considered the decision of this Court of Appeals in which this relationship was largely laid at rest and made *res judicata*. And the Patent Office did not have before it the damaging admissions made during the prior litigation by Coleman's Kice and its former counsel, Mr. Lyon, as to the extreme relevance of the Browell disclosure. These elements of the case were all known to Coleman and not presented to the Patent Office and must therefore be presumed to be adverse. Any presumption of validity for the Giwosky patent is completely destroyed.

This case may be unusual, but it is not unusual because the record before the Patent Office was the same as the record before the District Court. On the contrary, it is unusual because, before granting summary judgment, the District Court had had the advantage of learning all about the Giwosky, Hollingsworth and Browell devices in open court in a long trial and an accounting proceeding, and had had the further advantage that all of the real issues of fact involved had previously been laid at rest either

by Coleman's admissions or by the decision of the Court of Appeals. Siegler, of course, had the burden of overcoming the presumption of validity of the Giwosky patent, but it met that burden by incontrovertible evidence and decisions that were not before the Patent Office.

In a recent case of the Second Circuit (cited by Coleman in its Op. Br. p. 14), the Court reversed a summary judgment, saying:

"Were we skilled in the art it might be simple to determine whether there was any 'genuine issue' as to any material fact with respect to the anticipation of the second Rotheim patent, but we lack that special knowledge which would permit us to read that patent so understandingly and this record is barren of proof to enable us to do so." (*Bridgeport Brass Co. v. Bostwick Laboratories, Inc.*, 181 F. 2d 315, 319 (2d Cir., 1950).)

The *Bridgeport Brass* case has no application here, because in the instant case both the trial court and this Court of Appeals have the "special knowledge" from the prior litigation and the record of the prior litigation bulges with the required proof.

There can be no doubt that the record of the prior litigation was before the trial court. The parties had so stipulated. [R. 277, 312.] And even in the absence of such a stipulation, the trial court would have been justified in doing so.

"The plaintiff argues that the Court could not look to the record of the prior litigation in support of the motion for summary judgment; but we think there can be no question as to the correctness of the Court's action in doing so." (*Ellis v. Cates*, 178 F. 2d 791, 793 (4th Cir., 1949).)

In the case of *Bobertz v. General Motors Corp.*, 228 F. 2d 94, 101 (6th Cir., 1955), the court noted that the trial judge had before it the prior art, numerous depositions, admissions, affidavits and photographs, and had the benefit of extensive briefs. In affirming a summary judgment of invalidity of the patent in suit the court stated:

“He was in full possession of all essential facts necessary for a correct decision of the case.”

In the instant case, the trial court looked to the record of the prior litigation to find “all essential facts necessary for a correct decision,” if any facts over and above the prior art patents and the file wrapper of Giwosky are necessary. What it found there removes the presumption of validity of the Giwosky patent and clearly supports its finding that Claim 2 of Giwosky is invalid for lack of invention. That claim is directed to one of the “immaterial variations” that Coleman made when it “faithfully copied” the Hollingsworth design, and even this “immaterial variation” is clearly disclosed in the earlier patent to Browell. [R. 144.]

As this Court recently held:

“Even one prior art reference, which has not been considered by the Patent Office may overthrow the presumption of validity and, when the most pertinent art has not been brought to the attention of the administrative body, the presumption is largely dissipated. *Such is the case here.*” (Italics added.)

*Jacuzzi Brothers v. Berkeley Pump Co.*, 191 F. 2d 632, 634 (9th Cir., 1951).



IX.

**No Further Evidence Is Required to Establish the Invalidity of Claim 2 of the Giwosky Patent.**

At page 12 of its opening brief, Coleman makes the extravagant assertion that:

“If appellant had been permitted to present evidence in support of Claim 2, it would have shown that the prior art Hollingsworth design was defective, that the defect was discovered by Giwosky, and that the Giwosky device represents the first complete solution to the problem of avoiding objectionably hot walls while still achieving high efficiencies in gas wall heaters.”

A similar blatant effort to raise an issue of fact where none exists occurs at pages 30-33 of Coleman's opening brief. Here counsel calls attention to the fact that Hollingsworth taught that in order to solve the hot wall problem without loss of thermal efficiency, it is necessary to draw air into the economizer from the space inside the wall around the lower box, and then goes on to say that if Coleman had been permitted to present evidence on this point, it

“would have shown that Hollingsworth was mistaken, that what he believed to be essential and beneficial was actually non-essential and detrimental, and that the results which Hollingsworth sought are not in fact achieved by his combination, but instead are achieved by the Giwosky combination.”

This assertion flies in the face of this Court's finding that “the record establishes a ready and widespread acceptance of the Holly [Hollingsworth] device and attendant commercial success” (233 F. 2d 71, 80) and the Dis-



strict Court's finding, reiterated by this Court of Appeals, that

"the combination of elements described and claimed in the [Hollingsworth] patent in suit cooperate to permit the thermal in-put of wall heaters to be increased without bringing about excessive wall temperatures at any point in the wall from floor to ceiling, and without reducing thermal efficiency of the wall heaters; and that the invention of the [Hollingsworth] patent in suit has simultaneously solved the hot wall problem from floor to ceiling, increased thermal efficiency while permitting increased heat in-put, improved air circulation within the room, minimized heat loss due to warm air being sucked out of the room through the draft hood, and has rendered this heat loss substantially independent of flue height." (233 F. 2d 71, 81.)

The assertion also flies in the face of this Court's holding that Hollingsworth *et al.*, created "something new in overall construction and functional operation—a compact unitary wall device which could easily be adapted to the modern pattern and mode of living under conditions of urban life. . . ." (233 F. 2d 71, 84.) In short, Coleman is here, as in its appeal from the District Court's decision on the accounting in the prior litigation, attempting to re-try issues that have long been *res judicata*.

No amount of evidence could change these judicially determined facts. And Coleman's proffered evidence, whatever it might be, could not stand up in the face of its own conduct. Thus, no evidence can alter the fact that, despite its false promises, Coleman never did make and sell heaters constructed in accordance with the "important novel feature" of the Giwosky patent in which the economizers receive air through vents at the base *instead* of drawing it upward from the space in the wall around the

lower box. It is *res judicata* that the original Coleman four-foot economizers drew air from the space in the wall around the lower box as taught by Hollingsworth and that despite promises to the contrary, Coleman's second version equipped with the three-foot economizers did the same thing. (233 F. 2d 71, 84.) The District Court in the contempt proceeding found that Coleman's third version, equipped with the chute, continued to draw air in material quantities from the space in the wall around the lower box. [Acc. R. 41.] And after Coleman was held in contempt, it did not adopt the design of the Giwosky patent, in which no air is drawn upward into the economizer from the space in the wall around the lower box. Instead, as Coleman admits, it went to a design which employs no economizer at all. [Acc. R. 1623.]

In the case of *Park-In Theatres v. Perkins*, this court had no difficulty on an appeal from a summary judgment in disposing of a contention similar to Coleman's *even though the Court itself had in earlier litigation on the patent suggested that*:

“ . . . The patentee has the right to fortify the presumption of validity of the patent by proof of matters tending to show that the conception of the patentee involved invention and utility.” (190 F. 2d 137, 141.)

When faced with the argument Coleman is now making the Court pointed out, however, that “the parties indicated their view that nothing beyond the record as made for hearing on motion for summary judgment was essential to decision of the basic issue of validity.”

“ . . . We think these considerations are significant because they serve to remove the likelihood . . . that additional evidence would be useful in illuminating the question of the invention.”

As in the *Park-In Theatres* case, the parties in the instant case stipulated that the court could consider an adequate record in ruling on the validity of the patent in suit. The following colloquy is significant:

“The Court: . . . If it is agreed I will take judicial notice of the papers and records in the other other case, Case No. 15,886.

Mr. Stanbury: We will stipulate that the Court may do so.

The Court: Is that agreeable to the plaintiff?

Mr. Hoegh: Yes, your Honor.”

\* \* \* \* \*

The Court: Perhaps I am extending it too much. Perhaps I should say the record before the Court of Appeals.

Mr. Stanbury: Well, that’s another matter, your Honor.

The Court: You would want the entire record.

Mr. Stanbury: Oh, yes.

The Court: Very well.” [R. 277-278.]

The instant case is thus a far stronger one for granting summary judgment than was the *Park-In Theatres* case, for in the instant case the parties agreed that the Court could consider the entire record of the earlier litigation involving the prior art references and the patent in suit as well.

Nonetheless, appellant now suggests the need for proof that the reference Hollingsworth malperformed and that Giwosky solved the problem. Proof of the type suggested was presented to the District Court in the earlier case and rejected by the Trial Court and this Court.

Coleman’s expert Kice argued that problems which existed in Hollingsworth were overcome by the “inde-

pendent (economizer) air source,” the “important novel . . . feature” of Giwosky. [Orig. R. 340-358; R. 163.]

However, it is established that all Holly heaters have the necessary A.G.A. approval, and these heaters have been sold for many years. The District Court found

“That all plaintiff’s wall heaters exemplified by exhibits 20 through 20d and 44 embody the inventions claimed in the patent in suit.” [Orig. R. 26.]

The above-quoted finding included plaintiff’s wall heater models now charged to infringe. [Orig. R. 450, 465, 534; R. 14, 15; Acc. R. 1206, 1207.]

In view of the record Coleman has no standing to urge the need of a trial to show “that Hollingsworth was mistaken . . . and that the results which Hollingsworth sought were achieved for the first time by the Giwosky combination.” (Op. Br. p. 32.) Its proffered evidence is merely cumulative and would not change the result. The stark facts are that Hollingsworth was successful while Giwosky produced wall temperatures so dangerously hot that Coleman did not even bother to measure them. (233 F. 2d 71, 80.) [R. 235.]

Again the opinion in *Park-In Theatres* is appropriate.

“It is true that appellant claims generally that there are material issues of fact in dispute. But as we read the affidavits filed in connection with the motion for summary judgment, they do not disclose the occasion for proof beyond the record already made. Indeed the affidavits reveal rather clearly that on the issue of invention, the problem here is essentially one of applying legal standards to circumstances adequately before the court.

“. . . There are . . . cases where there can be little doubt what the patent claims and factual pres-

entation is not necessary to illuminate the alleged invention . . . This appears on its face to be such a case . . . and the appellant suggests nothing persuasive to the contrary.” (190 F. 2d 137, 142.)

Coleman’s proffer of evidence that is contrary to judicially determined facts in the prior litigation and to its own conduct is, to say the least, ludicrous and represents but one more effort to retry issues of fact that have been laid at rest in the prior litigation between the parties.

## X.

### The Giwosky Patent Is But a “Paper” Patent, Directed to Something That Coleman Promised to Do and Never Did.

“The profession is fully aware of the proper status of a paper patent. It may or may not establish or tend to establish the absence of utility, exercise of inventive genius, or extent of advance in a given art. The facts in each case must determine its status . . .” (*Staudé v. Bendix Products Corp.*, 110 F. 2d 484 (7th Cir., 1940).)

The facts in the case at bar establish the “absence of utility” and absence of the “exercise of inventive genius” in the paper patent in suit.

Giwosky applied for the patent in suit in October 1953, after he had seen the Holly heaters constructed in accordance with the Hollingsworth patent, after Coleman had begun its infringement of the Hollingsworth patent and after Holly had sued Coleman for such infringement. (233 F. 2d 71, 84.) At best it represents no more than an unsuccessful effort to avoid the Hollingsworth patent while retaining the advantages of an integrated economizer.



Holly put the Hollingsworth heater on the market in 1950 and it was an immediate commercial success. Coleman obtained one of them and undertook to design one like it. Mr. Giwosky, the patentee of the patent involved in this action, was put in charge of the work. (233 F. 2d 71, 84.) In 1952, the Hollingsworth patent issued and soon thereafter Coleman put Mr. Giwosky's first production design on the market. This was a wall heater equipped with a so-called "four foot economizer" which drew part of its air from the space around the back and sides of the lower box and another portion from the room through a grille or inlet in the lower front portion of the economizer. Holly sent Coleman a notice of infringement, and as the District Court found and this Court of Appeals reiterated.

"after Holly had sent notice of infringement of the patent in suit to Coleman, it represented to Holly that it was redesigning the Coleman wall heaters . . . to prevent the flow upward from the conduit provided outside the first box and inside the wall. . . ." [Acc. R. 430.]

Coleman's representation was in the form of two letters from its counsel, Mr. Dawson, to Holly's counsel. In the first letter, dated April 15, 1953, Mr. Dawson said:

"I have now been advised by Coleman that in view of the comments in your letter, they have decided to make a further change in the structure in which the upper unit is seated within the lower unit so that there is no possibility of any flow of air from the space about the lower unit into the upper box. I believe that this will satisfy your client and I shall plan to send a copy of the drawing of the new structure in the very near future." [R. 153-154.]



With the second letter, dated June 4, 1953, Mr. Dawson sent the promised drawing and said:

“In the drawing you will note that the second or upper box 10 is closed at its bottom and that it is open only at its forward intake 11. None of the air from about the lower box is thus able to enter the box 10. Instead, the air that enters the upper box 10 is room air passing through the entrance 11 and extending upwardly about the pipe 12 and outwardly through the discharge opening 13.” [R. 155.]

The drawing that Mr. Dawson referred to is reproduced in the record at page 157. It bears a startling resemblance to Figure 2 of the Giwosky patent [R. 69, 314] and Mr. Dawson, when he testified during the accounting proceeding, admitted on cross-examination that the two drawings were the same and applied the description quoted above from his letter of June 4, 1953 to Figure 2 of the Giwosky patent. [R. 164-165.]

In short, it appears beyond any argument that the Giwosky patent is directed to the wall heater that Coleman represented to Holly that it was going to put on the market in 1953, but which it never did put on the market. Instead, as the trial court and this Court found:

“ . . . Coleman . . . represented to Holly that it was redesigning the Coleman wall heaters . . . to prevent the flow of air upward into the second box or economizer from the conduit provided outside the first box and inside the wall, but that Coleman’s redesigned wall heaters . . . which were manufactured and sold by Coleman on or after November 2, 1953, and which employed its 3-foot economizer, did not prevent such flow of air; that Coleman’s wall heaters

. . . sold by it on or after November 2, 1953, employed its so-called 3-foot economizer which was adapted to receive air flowing upward outside the first box and inside the wall as taught and claimed by the patent in suit [the Hollingsworth patent].” (233 F. 2d 71, 82.)

The record of the prior litigation shows plainly that Coleman never did adopt the design of the Giwosky patent in which all the air is introduced into the economizer from a grille in its lower front portion and none is brought up from the space inside the wall around the lower box, or as it is expressed in the Giwosky patent, in which the air entering through the front of the economizer “*is entirely separate* from the air heated by the wall heater [the lower box].” [R. 316.] It did add so-called “chutes” to its heaters after this Court of Appeals rendered its decision, but this did not cut off the flow of air from the space inside the wall around the lower box, as the trial court found in the contempt proceeding. [Acc. R. 41.] Even after the contempt proceeding Coleman did not adopt the design of the Giwosky patent. Instead, it went to an entirely different type of heater which does not employ any economizer. [Acc. R. 1623.]

Even the alleged inventor, Giwosky, stated that the design of Claim 2 of his patent was useless. He stated that he constructed such a two-stage heater and found it was unsatisfactory and it failed to pass American Gas Association tests. [R. 41, 43, 63.] In view of the facts the status of the paper patent in suit establishes “the absence of utility [and of the] exercise of inventive genius.”

### Conclusion.

This case involves no genuine issue of any material fact, and the District Court did not err when, in a summary judgment proceeding, it held the sole claim in issue invalid for lack of invention over the prior art.

The meaning of Claim 2 of the Giwosky patent is abundantly clear in the light of the admission of Mr. Dawson, the attorney for Coleman who wrote the patent application and the claim. The "important feature" of the claim is nothing more than drawing the air for the economizer directly into its base through a vent or grille (as taught by Browell), instead of drawing it upwardly from the space in the wall around the lower box (as taught by Hollingsworth).

The meaning of the two Browell and Hollingsworth patents (the only prior art relied upon by the District Court) is beyond dispute. Both patents were carefully considered and interpreted by the District Court and the Court of Appeals in the prior litigation. The device disclosed and claimed by Giwosky differs from the prior Hollingsworth device in only one particular, and this particular, the drawing of the air for the economizer directly into its base from the room, instead of upwardly from the space in the wall around the lower box is disclosed by Browell. This fact was not only admitted by Coleman but repeatedly emphasized by it during the prior litigation.

Giwosky's combination of segments of the prior art taken from Hollingsworth and Browell was not productive of any surprising results and these segments, as combined by Giwosky, do not perform any additional and different functions in combination than they perform out of it. On the contrary, the Giwosky combination is an impractical and unsuccessful device that Coleman never made and sold, despite its solemn promise to do so.

There is no issue as to the prior art as exemplified by Hollingsworth and Giwosky and no issue as to what Giwosky did to "improve" upon this prior art. The question before the District Court was purely a question of law. The District Court correctly decided that the difference between what Hollingsworth and Browell disclosed and what Giwosky patented is so minuscule that it does not amount to invention.

"Judicature is a practical business and the summary judgment procedure has been introduced into our practice as a practical device for the expeditious disposition of litigation where there appears to be no need for the usual type of trial. We think the district judge reasonably and correctly concluded that the posture of this case at the time of adjudication showed that there would be no point in taking testimony upon the question of invention. Indeed, neither in the district court nor here has appellant made apparent what, if anything, in addition to the present record might have been useful on the issue of invention." (*Park-Inc. Theaters v. Perkins*, 190 F. 2d 137, 142 (9th Cir., 1951).)

The summary judgment of the invalidity of Giwosky's Claim 2 should be sustained.

Respectfully submitted,

CHRISTIE, PARKER & HALE,

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*Of Counsel:*

RICHARD B. HOEGH.



## APPENDIX A.





BROWELL-1882

FLUE

CEIL

B

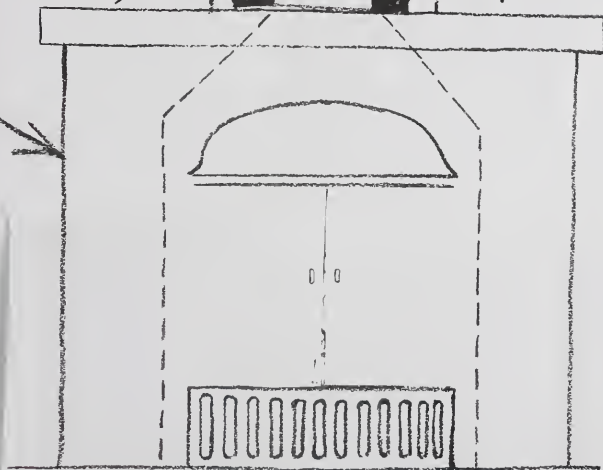
SECOND  
BOX

FIRST

BOX

Case No. 16  
J. L. W. Chapman  
DIST. AA  
AA DISTRICT  
Clerk U. S. District Court, San Dist. of Calif.  
Deputy Clerk

A



FLOOR

FIRST WALL HEATER

APPENDIX A

